

NEBRASKA DEPARTMENT
OF INSURANCEBEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

OCT 14 2005

FILED

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

MATTHEW SLEISTER,

RESPONDENT.

CONSENT ORDER

CAUSE NOS. A-1627 and A-1628

Oct 17, 2005	ACCT# 8521	\$5,000.00
NO-INVOICE		TRAN# 1512837
SLEISTER, MATTHEW DAVID		
CHECK# 1066		

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Martin W. Swanson and Matthew Sleister, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01 and §44-4001, et seq.
2. Respondent was licensed as an insurance agent under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Matthew Sleister, Cause Number A-1627 on June 21, 2005 and another petition styled State of Nebraska Department of Insurance vs. Matthew Sleister, A-1628 on June 21, 2005. Copies of the petitions were served upon the Respondent at the Respondent's home address and registered with the Department by certified mail, return receipt requested.

2. In A-1627, Respondent twice violated the Neb. Rev. Stat. §§44-4059(1)(b), 44-4059(1)(g), 44-4059(1)(h), 44-1524 and 44-1525 (1)(a), 44-1525(1)(f) as a result of the following conduct:

- a. On June 5, 2003, Respondent solicited two contracts from Mr. Alvin Baker (Alvin). The first contract was for a Medicare Supplement Policy (#203048453) and the second was for a Whole Life contract (#8345237).
- b. On December 9, 2004, Alvin filed a complaint with the Nebraska Department of Insurance. In that complaint, Alvin informed the Department of Insurance that Respondent made an appointment with Alvin regarding his and his wife's (Carol Baker (Carol)) Medicare Supplement Policy. During the course of that appointment, Respondent told Alvin that Bankers Life was raising the premium on his Medicare Supplement Insurance. Alvin agreed to pay the increase. Respondent proceeded to ask Alvin if he wanted a life insurance policy as well. Alvin did not want a life insurance policy since he already had one but was then told by Respondent that he had to take the life insurance policy with the Medicare Supplement policy. Respondent told Carol that she too would have to purchase a life insurance policy in order to obtain the Medicare Supplement insurance. Each of the additional policies cost the Bakers a total of \$5000.
- c. In each of the "agent statements" portion of the Bakers' Medicare Supplement application, the application requires disclosure of all premiums, including "in-force and applied for" life insurance. The Whole Life coverage is not reflected in these figures in either application, thus understating the total required premium. Moreover, the "agent statement" section also includes a field labeled "Total Premium (life & health) which reinforced any suggestions or implications that the Whole Life policy was a required component of the Medicare Supplement contract.
- d. Pursuant to the investigation of Alvin's complaint, the Nebraska Department of Insurance contacted Bankers Life. Bankers Life conducted a review for other Whole Life policies that Respondent may have tied in with the sale of Medicare Supplement insurance. Pursuant to that investigation, four other instances came to light. In those cases, all of the insureds complained to Bankers Life about the actions of Respondent in that they were forced to purchase the Whole life policy in order to obtain the Medicare Supplement Insurance policy.

3. In A-1628, Respondent violated Neb. Rev. Stat. §§44-1524, 44-1525(1)(a), 44-1525(1)(f), 44-1525(10), 44-4059(1)(b), 44-4059(1)(g), 44-4059(1)(h), Title 210 NAC Ch. 19

§006, specifically (006.01) (006.01B) (006.02) (006.02A) (006.02B) (006.02D) and Title 210 NAC Ch. 50 §005, specifically (005.01), and Title 210 NAC Ch. 50 §006, specifically (006.02), as a result of the following conduct:

- a. On July 29, 2003, Respondent solicited business from Janet King (King). King wanted to add to her existing annuity but Respondent told her that it could not be done that way. As part of that business transaction, Respondent advised King that she should surrender her current annuity with Bankers Life (Bankers) and replace it with a new annuity. King, with the assistance of Respondent, completed the surrender request on annuity number #7621380. The surrender was completed and \$112,679.71 was mailed to King on August 18, 2003.
- b. The solicitation materials Respondent employed in this particular sale, as he subsequently admitted in an August 18, 2004 letter to Scott Zager, an insurance investigator with the Nebraska Department of Insurance, included the following:
 1. Current interest rates without disclosing guaranteed rates.
 2. It described an annuity as a "CD Alternative" rather than describing the actual product.
 3. A reference to "resource for emergencies" without denoting that the product may have surrender charges and may not be readily available in all financial emergencies.
 4. A reference to "liquidity" without denoting that the annuity may have a surrender penalty and that it takes time to process a surrender request.
 5. Included a statement that "no one has ever lost a penny," which is broad and sweeping for an annuity especially considering that the surrender penalty was not disclosed on that slide.
 6. A reference to the "Legal Reserve System." It does not denote what the "Legal Reserve System" is or even if it exists.
 7. It represented that the additional earnings on deferred taxes as triple compounding. In reality, tax payments remain part of the principal and interest until paid and the annuitant does not actually receive additional interest on the same funds.

- c. Respondent had previously entered into a consent order pursuant to case number A-1591 on the very same advertisement materials that he admitted to using in this solicitation. In that consent order, he admitted that these solicitation materials violated various regulations on the solicitation of annuities and he agreed to pay a \$5,500 fine.
- d. On August 28, 2003 Respondent completed the process by obtaining a new annuity, specifically Bankers annuity #7772424. The application contained a check for \$102,000. Respondent admitted that the premium originated from surrender proceeds. The replacement question on the application indicated that the annuity was not a replacement and there were no replacement notices included in the application.
- e. Prior to this, Bankers had counseled Respondent on the matter of annuity replacements.
- f. Respondent did not recommend using a 1035 exchange for the replacement specifically to trigger the taxation of accumulated earnings. Generally speaking, the transaction can be advantageous by reducing the taxable earnings payable if heirs are in higher tax brackets, but it negates a primary advantage of deferred annuities, the compounding of untaxed investment income. Despite Respondent explanation that annuity #7772424 would continue to build tax-deferred growth, he still recommended King withdraw all earnings annually. An Annuitant cannot receive tax-deferred growth on earnings that are withdrawn and, as such, the two options are mutually exclusive.
- g. Respondent admitted that the primary selling point of the newer annuity was a higher interest rate with no service fees. Annuity #7621380 was paying a minimum 4% with a \$24 annual fee. Annuity #7772424 paid 5.25% for one year, after which it guaranteed only a minimum 3.25%. When computing the contracted benefits using King's current balance, the advantage of the 1st year bonus interest was depleted before the end of the 3rd year policy anniversary. At that point, the insured was subject to substantial surrender charges for seven more years. A secondary benefit of the new policy, Respondent claimed, was an additional withdrawal option. This, in reality, provided no advantage to the client since the prior contract had already surpassed the period of surrender charges. Respondent, however benefited, via this transaction, by obtaining an additional commission.
- h. On July 14, 2004, the Nebraska Department of Insurance received a complaint from King. Included in that complaint was a letter to Bankers. In that letter, King informed both the Department of Insurance and Bankers that in addition to the aforementioned issues, she had a taxable gain of \$42,000 and that she had to pay \$8,781 dollars in taxes. Additionally, she

became ineligible for the Nebraska State Homestead exemption and would be subject to property taxes.

4. Additionally, the Department and Respondent agree to incorporate into this agreement certain other matters currently under investigation by the Nebraska Department of Insurance but not yet filed as Petitions against Respondent. The Department, in exchange for Respondent's agreement to sign this consent order, agrees not to file administrative actions in Case Nos. 05-0786; 04-1749; and 05-0743.

5. Respondent was informed of his right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving his right to a public hearing, Respondent also waives his right to confrontation of witnesses, production of evidence, and judicial review.

6. Respondent neither admits nor denies the allegations contained stated in Paragraph #2 above but agrees to the terms in the consent order in order to resolve this matter.

CONCLUSIONS OF LAW

In A-1627, Respondent's conduct as alleged above constitutes two violations each of Neb. Rev. Stat. §§44-4059(1)(b), 44-4059(1)(g), 44-4059(1)(h), 44-1524 and 44-1525 (1)(a), 44-1525(1)(f) in case A-1627. In A-1628, Respondent's conduct violated Neb. Rev. Stat. §§44-1524, 44-1525(1)(a), 44-1525(1)(f), 44-1525(10), 44-4059(1)(b), 44-4059(1)(g), 44-4059(1)(h), Title 210 NAC Ch. 19 §006, specifically (006.01), (006.01B), (006.02), (006.02A), (006.02B), (006.02D), and Title 210 NAC Ch. 50 §005, specifically (005.01), and Title 210 NAC Ch. 50 §006, specifically (006.02).

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent Matthew Sleister that he shall pay an administrative fine of \$15,000 and serve a four-year suspension effective upon the date of approval of this consent order by the Director of the Nebraska Department of Insurance. The fine must be paid within one year after the Director of the Department of Insurance affixes his signature to this document and approves said consent agreement. If Respondent fails to pay this fine in the time specified, his Nebraska's insurance producers license shall automatically be revoked. Additionally, Respondent shall not own nor operate an insurance agency during the suspension. If Respondent operates or owns an insurance agency during the time of his suspension, his insurance producers license shall be revoked automatically. The Department will not file actions in Case Nos. 05-0786, 04-1749 and 05-0743, in exchange for Respondent's agreement to abide by the terms of this Consent Order. In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing his signature below.




Martin W. Swanson, #20795
Attorney for Nebraska
Department of Insurance
941 "O" Street, Suite 400
Lincoln, Nebraska 68508
(402)471-2201

14 October 2005
Date


Respondent

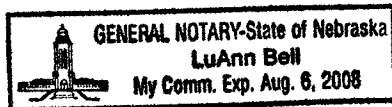
10-7-05
Date


Brad E. Nick, #19101
Attorney for Respondent

10-9-05
Date

State of Nebraska)
County of Dodge) ss.

On this 7 day of October, 2005, Matthew Sleister personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his voluntary act and deed.



LuAnn Bell
Notary Public

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Matthew Sleister, Cause Nos. A-1627 and A-1628.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. Tim Wagner
L. TIM WAGNER
Director of Insurance

10/14/05
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent, in care of his attorney, Brad Nick, at 340 E. Military Ave., Fremont, Nebraska, by certified mail, return receipt requested on this 18th day of October, 2005.

Tracy A. Gurnea